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4   UNITED STATES DISTRICT COURT

5   NORTHERN DISTRICT OF CALIFORNIA

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7   ORLANDO GARCIA,   Case No. 21-cv-07406-JCS
              Plaintiff,

8

          v.   **ORDER TO SHOW CAUSE WHY EX**
9   **PARTE APPLICATION FOR ENTRY**
                                              OF STIPULATED JUDGMENT
     NASHWAN M. ALI,   **SHOULD NOT BE DENIED**
10
              Defendant.
11   Re: Dkt. No. 12

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13   Plaintiff brings an ex parte application ("Application") asking the Court to vacate the

14   dismissal in this case and enter a stipulated judgment based on Defendant's default under the

15   parties' settlement agreement. The settlement agreement requires that in the case of default, a

16   stipulated judgment may be entered if Defendant has not cured the default within five days after

17   notices to cure have been sent "to the email and physical addresses" of the defendant at the

18   addresses listed in the settlement agreement. Dkt. 12-2 (settlement agreement) ¶ 5. Although this

19   section of the settlement agreement, which appears to be a form contract, is set up to include

20   attorney contact information, that space is left blank. The space for Defendant's contact

21   information lists two physical addresses but no email address. *Id.* The settlement agreement was

22   signed by Defendant (not an attorney) and there is no indication that he was represented by

23   counsel when he entered into the agreement. *Id.*

24   Counsel states in the declaration filed in support of the Application that on April 22, 2022

25   her "office sent a letter to defendant and his counsel giving them notice of the default and

26   demanded that they cure the breach of the Settlement Agreement[,]" dkt. 12-1 (Gunderson Decl.) ¶

27   4, but she does not specify the means by which the letter was sent. Exhibit 3 to the Gunderson

28   Declaration appears to be an email to attorney John Coates with two notice-to-cure letters

United States District Court
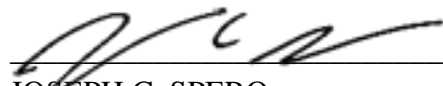Northern District of California

1   attached, one of which is addressed to Defendant at the addresses listed in the settlement

2   agreement.   Gunderson Decl., Ex. 3. However, although the email states that "hard copy will

3   follow via regular mail[,]" there is no evidence clearly establishing that the default notice was

4   actually mailed to the addresses listed in the settlement agreement.   The Court also notes that

5   there is no evidence in the record that Mr. Coates represents Plaintiff in this matter.

6   Plaintiff also does not explain the request in the Application for entry of judgment in the

7   amount of $14,082.19, *see* Application at 2, which is inconsistent with the statement in the

8   declaration of counsel that judgment should be entered in the amount of $12,500, that is, the

9    $11,000 in outstanding settlement payments plus $1,500 in liquidated damages. *See* Gunderson

10   Decl. ¶ 8.

11   Therefore, Plaintiff shall file a declaration (and supporting evidence as appropriate)

12   establishing that he has complied with the terms of the settlement agreement by sending the notice

13   of default to Defendant in the manner prescribed under the settlement agreement, that is, by U.S.

14   Postal Service to the two addresses listed in the settlement agreement. Plaintiff shall also address

15   the discrepancy between the amount of judgment requested in the Application and the amount

16   stated in the supporting declaration. To the extent Plaintiff seeks an award of prejudgment interest

17   on top of the outstanding settlement amount and liquidated damages, Plaintiff should provide a

18   precise calculation that addresses the starting and ending dates of the period on which interest is

19   calculated under the contract and addresses relevant authority governing whether liquidated

20   damages may be taken into account in the interest calculation. Alternatively, Plaintiff may

21   stipulate that he is only seeking entry of judgment in the amount of $12,500 and is not asking the

22   Court to award prejudgment interest. Plaintiff's declaration shall be filed no later than February

23   10, 2023.

24   **IT IS SO ORDERED.**

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26   Dated: February 3, 2023

27   _____

     JOSEPH C. SPERO
28   Chief Magistrate Judge

United States District Court
Northern District of California

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